IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 15TH NOVEMBER 2007 / 24TH KARTHIKA 1929

WP(C).No. 33580 of 2007(V)

PETITIONER:

SANTHOSH, AGED 40 YEARS,
S/O SATHYAVAN, RESIDING AT PARAKKATTU HOUSE,
SREEMOOLANAGARAM P.O., ALUVA VIA.

BY ADV. SRI.BIJU .C. ABRAHAM

RESPONDENTS:

---

1. INDIAN OIL CORPORATION LIMITED,
KERALA STATE OFFICE, PANAMPILLY AVENUE,
PANAMPILLY NAGAR, KOCHI 682036, THROUGH ITS
CHIEF OPERATIONS MANAGER.

2. INDIAN OIL CORPORATION LIMITED,
REGISTERED OFFICE, G-9, ALL YAVAR JUNG MARG,
BANDRA(EAST), MUMBAI-400051, REPRESENTED BY ITS
CHAIRMAN.

BY SRI. A.M. SHAFFIQUE SC FOR IOC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S. SIRI JAGAN, J.

W.P.(C)No. 33580 OF 2007

Dated this the 15th day of November, 2007

JUDGMENT

The petitioner in this writ petition is aggrieved by the limited tenders invited by the respondents for award of contract for transportation of Low Sulphur Heavy Stock (LSHS) to their various units and other works instead of resorting to open tenders by public notification. According to the petitioners, such action would violate the mandate of Articles 14 and 16 of the Constitution of India in so far as the tenders are invited only from selected few excluding persons like the petitioners, who are also equally entitled to participate in the tender.

2. The learned counsel for the respondents would submit that the respondents are resorting to this procedure in view of the fact that these supplies have to be effected by December and if they resort to open tenders, there would be considerable delay causing disruption of supply. The respondents would also rely on the decision of the Supreme Court in **NETAIBAG AND OTHERS** V. **STATE OF W.B. AND OTHERS** **[(2000) 8 Supreme Court Cases**

262], whereby the Supreme Court has held that non-floating of tenders or non-holding of public auction would not in all cases be deemed to be the result of the exercise of the executive power in an arbitrary manner and that the State is entitled to justify their action by showing that there was situations warranting such procedure. They would submit that this is a peculiar case which necessitated confirmation of tenders urgently so as to complete the supply within a period of two months and therefore they have resorted to inviting tenders from already empanelled contractors. The contention is that there is no case of discrimination or favouritism in this case, since the tenders are being invited from a body of persons, who have already undergone the selection procedure in previous tenders and have been empanelled as prospective contractors of the respondents.

3. After hearing both sides, I am satisfied that here is a case where because of the peculiar circumstances obtaining, in the sense that the supply have to be effected urgently, the respondents are justified in resorting to the procedure of inviting tenders from empanelled contractors especially in view of the fact that the period of supply would end by December.

Therefore, I am of opinion that I should not exercise my discretionary jurisdiction in this writ petition. However, I make it clear that the supply pursuant to the tenders now invited shall not go beyond December, 2007 . if the supply has to be effected beyond that period, the same shall be decided after inviting public tenders.

The writ petition is disposed of as above.

S. SIRI JAGAN, JUDGE

Acd